The Copenhagen Declaration: Wrapping up the Interlaken Reform?

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A. Introduction

The European Court of Human Rights (hereafter ECtHR or the Court) is a remarkably active international court, second in output of judgments only to the European Court of Justice, an institution with more than six times the budget and jurisdiction over private and public law questions in a wide range of fields.[1] By comparison, the ECtHR deals only with cases against its 47 Member States concerning one or more of between one and two dozen fundamental rights depending on which protocols the respondent state in question has signed. Nevertheless, the Court receives tens of thousands of applications every year from the around 830 million citizens its jurisdiction encompasses, and since the 1990s it has been unable to process these cases at the rate they were lodged, leading to the build-up of a backlog of cases. Court presidents, High Contracting Parties, and academic commentators have debated this unsustainable situation since the 1990s.[2] By the year 2000, at the 50th anniversary of the signing of the European Convention on Human Rights (ECHR), the backlog had reached 15,000

1 The ECtHR's budget for 2019 was just under 70m euro, whereas the ECJ had a 2018 budget of 410m euro. The ECtHR has 47 judges whereas the ECJ has 75 judges and 11 advocates general. (Court of Justice of the European Union: Annual Report 2018: The year in Review).

2 Court President Ryssdal warned of this in his Speech 'The Coming of Age of the European Convention on Human Rights' (1996) 1, *European Human Rights Law Review*, 18; while several judicial and political actors have warned it at various meetings in the Council of Europe. Available in: Council of Europe, *Reforming the European Convention on Human Rights: A work in progress* (2009), p. 147: Michael McKenzie of the Royal Courts of Justice, England in Warsaw 2006, on page 187: Jan Sobczak, Director General of Human Rights in Belgrade 2007, on page 245: Marie-Louise Bemelmans-Videc, Member of the Parliamentary Assembly in San Marino 2007, on page 468: Terry Davis, Secretary General of the Council of Europe in Stockholm 2008.

cases.[3] A decade later that number passed the 100,000 cases mark,[4] and cases now took so long to pass through the system, that the Court would likely have been in violation of article 6, had it been a State. This was a serious concern, as the Court's legitimacy depends on its ability to provide judgments on practical and effective human rights. At the time individual applicants often had to wait a decade or more to receive closure on whether their rights had been violated. This was particularly problematic for cases where time was sensitive, including cases on the right to family life where children were involved, and cases concerning deprivation of liberty or *non-refoulement*.

The high caseload of the ECtHR was originally one of the many markers of the triumph of the Convention System. In Slaughter and Helfer's model of effective supra-national adjudication, the ECtHR is held up as an example of a success, not least because its high output of judgments and decisions had enabled it to construct a comprehensive and coherent body of case law from which principles of interpretation could be both applied and exported to other courts.[5] The high caseload supposedly showed that the Court was well-known by potential applicants in its jurisdiction, and its judgments were considered fair by both applicants (who otherwise, presumably, would have not applied to it) and Member States (who otherwise, presumably, would not continue to expand its jurisdiction).

Throughout its 60 active years, the ECtHR has also been undergoing almost continuous reform. Protocols have been negotiated to improve applicants' access to the Court (Protocols 9 and 11),[6] to increase the capacity of the Convention System (Protocols 3, 8, 11, 14),[7] to include more

3 *Ibid*., 11: Walter Schwimmer, Secretary General of the Council of Europe pointed to this in his speech in Rome 2000.

4 Department for the Execution of Judgments of the European Court of Human Rights 2017. Pending cases: Overview 1998 – 2017, Strasbourg.

5 Helfer and Slaughter, 'Toward a Theory of Effective Supranational Adjudication' (1997) *Yale Law Journal*, 2.

6 The *Convention for the Protection of Human Rights and Fundamental Freedoms.* (2019[1950]).

7 The European Court of Human Rights was up until the coming into effect of protocol 11 in 1998 one of two institutions that undertook analysing and reporting/adjudicating on human rights applications. (interested readers can learn more on this in: Myjer, *The conscience of Europe: 50 years of the European Court of Human Rights* (2010), the Committee of Ministers also played an important role in adjudication in the first three decades of the Convention's existence. Even today, the Committee of Ministers undertakes important tasks in relation to the execution of judgments. In this article the term 'Convention System' is used when referring to not only the Court but all the branches of Convention adjudication,

fundamental rights and abolish the death penalty (Protocols 1, 4, 6, 7, 13), and to ensure the independence of the judges and functioning of the Convention System (Protocols 2, 5, 10, 11). The most recent reform, the Interlaken process which took place between 2010 and 2020, thus dealt with a problem the Convention system had faced before, namely an insufficient capacity to deliver judgments as fast as applications came in. Unlike previous reforms however, this one took place in a period where the public discourse in Europe was unfavourable to the idea of international adjudication. This makes the Interlaken process a particularly interesting lens for studying the perception of the legitimacy of the ECtHR in a changing political landscape, and since the reform has only just been concluded at the end of 2020, such a study is particularly appropriate to take on at this time.

This chapter will take on this task by providing an overview of this recently concluded reform and provide an analysis of how it was impacted by the changing political climate. Throughout the reform, the Steering Committee for Human Rights (CDDH) issued two central reports in 2015 and 2019,[8] and the Parliamentary Assembly for the Council of Europe (PACE) held regular meetings on the themes of the reform,[9] but by far the most well-known output of the reform is the five Declarations from the High-Level Conferences undertaken by the Chairmanships of the Committee of Ministers in Interlaken (Switzerland) in 2010, Izmir (Turkey) in 2011, Brighton (United Kingdom) in 2012, Brussels (Belgium) in 2015, and Copenhagen (Denmark) in 2018. These Declarations are intriguing when studying the interplay between the political and the judicial branches of the Convention System, since they represent an official mouthpiece of the Member States and therefore an opportunity to assess their views of the Court in a structured manner. International declarations of this kind are the result of a compromise between the 47 Member States and are thus often very polished documents. For two of these Declarations

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including the Committee of Ministers, The Commission of Human rights (where applicable), The Court, and the Member States, as each have important tasks to take on to make the rights in the Convention effective.

8 *Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration adopted by the CDDH at its 92nd meeting* (26–29 November 2019), R92Addendum2; *The longer-term future of the system of the European Convention on Human Rights* (2015). The Steering Committee for Human Rights (CDDH), CDDH(2015)R84 Addendum I.

9 A wide range of documents are available at semantic-pace.net, the most relevant ones to this chapter will be referenced separately.

however, early drafts are available for study. A draft of the Brighton Declaration from 2012 was leaked,[10] and in the case of the Copenhagen Declaration from 2018, it was deliberately made public.[11] Both drafts were controversial,[12] but to outside observers, the Copenhagen Draft was the more surprising one. While the United Kingdom had expressed critical views of the interpretation tradition of the ECtHR in the past, notably as a third-party intervener in central cases[13] and through non-compliance,[14] Denmark was an infrequent respondent and intervening state and historically one of the first to accept the Court's jurisdiction. It also had a record of winning most of its cases and promptly implementing any judgments finding violations.[15] The confrontational tenor of the Copenhagen Draft, which had not even been attempted kept confidential, was therefore unsuspected. For these reasons, and because the Copenhagen Declaration was the last Declaration in the Interlaken reform, this chapter will zoom in on the Danish context and the changes that took place from Draft to final Declaration in 2018. The reasoning for doing this is thus both general and specific. On the one hand we might assume that each of the Declarations have gone through a process similar to the Copenhagen Declaration's journey from a Draft written by national authorities coloured by national priorities, to an international Declaration adopted by 47 Member States

10 *Draft Brighton Declaration.* (23 February 2012). The Guardian originally posted the leaked draft, but it is no-longer available there. At the time of writing the 2012 draft can be accessed here: https://www.documentcloud.org/documents/321624-draft-brighton-declaration-on-echr-reform.html.

11 *Draft Copenhagen Declaration* (5 February 2018). Available here: https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/nyheder/draft_copenhagen_declaration_05.02.18.pdf.

12 Føllesdal and Ulfstein, 'The Draft Copenhagen Declaration: Whose Responsibility and Dialogue?' (2018). EJIL:Talk!, https://www.ejiltalk.org/the-draft-copenhagen-declaration-whose-responsibility-and-dialogue/ February 22nd 2018; Donald and Leach, 'A wolf in sheep's clothing: why the draft copenhagen declaration must be rewritten' (2018) EJIL: Talk! https://www.ejiltalk.org/a-wolf-in-sheeps-clothing-why-the-draft-copenhagen-declaration-must-be-rewritten/ February 21st 2018; Ulfstein and Føllesdal, 'Copenhagen – much ado about little?' (2018), EJIL: Talk! https://www.ejiltalk.org/copenhagen-much-ado-about-little/ April 14th 2018; Bates, 'Who should have the final word on human rights?' (2012). UK Human Rights Blog https://ukhumanrightsblog.com/2012/03/06/who-should-have-the-final-word-on-human-rights-dr-ed-bates/ March 6th 2012.

13 See e.g., ECtHR, Judgment (GC), 22 May 2012, *Scoppola v Italy (no. 3)*, Application No. 126/05.

14 See e.g., ECtHR, Judgment (GC), 6 October 2005, *Hirst v The United Kingdom (No. 2)*, Application No. 74025/01.

15 Hartmann, *Danmark og Den Europæiske Menneskerettighedskonvention* (2017), 37.

reflecting common priorities. The choice of the Copenhagen Declaration is also partly due to its process having been relatively transparent. The transparency makes it possible to study it in a way it has not been possible with earlier Declarations. At the same time, the political context in Denmark including the confrontational discourse on the ECtHR, which is visible in the Copenhagen Draft cannot be assumed to be replicated in most CoE Member States for the simple reason that the negotiated final Copenhagen Declaration does not reflect it to the same degree.

The remainder of this chapter will proceed in the following manner. First the reform history of the ECHR will be addressed briefly along with the goals of the Interlaken process and the methods suggested by key actors to achieve those goals (B). Then we explore the progress in the Interlaken reform up until the Danish Chairmanship took up the mantle in 2017–2018 (C). This will be followed by a section on the content of the Copenhagen Draft and the final Copenhagen Declaration (D), determining how this crucial last Declaration suggested solving the problems laid out in section B. Finally, the concluding remarks (E) will assess to what extent the issues that led to the initiation of the Interlaken process have been addressed. This section will also provide a bit of Danish political context to answer the question asked by the PACE in the aftermath of the Danish Chairmanship on how *'a founding member of the Council of Europe saw fit to submit a Draft Declaration that would have put in question some of the fundamental principles on which the Convention system depends'*?[16]

B. The Interlaken Reform: The Latest Chapter in a History of Reforms

The Convention System has been under continuous development since the Convention was first opened for signatures in 1950. It has grown geographically from 14 signatory states to 47, materially, with additional protocols including more rights, and its system of adjudication has changed. The ECHR was the first treaty of its kind that aimed to create a supranational jurisdiction with binding force on human rights within the borders of the state.[17] Initially, the Member States which negotiated the Convention were reluctant to give the Court jurisdiction.[18] In the 1950s,

16 Parliamentary Assembly of the Council of Europe (PACE), *Copenhagen Declaration, appreciation and follow-up*, 24 April 2018, Doc. 14539, para. 5.

17 *Travaux Préparatoires vol I*. 1975, 30.

18 Evidenced by the fact that there were not initially enough article 46 declarations to create the Court.

it was thus only the Commission on Human Rights that could hear cases from the Member states. The Commission was not a judicial body but rather a body of experts with the power to investigate and report to the Committee of Ministers. Even the Commission could initially only hear inter-state cases[19] unless the State in question had agreed to individual application explicitly (so-called Article 25 declarations). The Court only came into existence in 1959, when 8 of the original 14 signatories had delivered declarations that they would submit to the jurisdiction of the Court (so-called Article 46 declarations). In the first cases before the Court, even those launched by individuals, individual applicants could not be parties. The case went instead through the Commission, which reported to the Committee of Ministers, which could then choose to bring the case as a party before the Court. This changed gradually through the 1980s and 1990s through first the Rules of the Court and then later the optional protocol 9 in 1990 and finally protocol 11 in 1998. Protocol 11 made major changes to the Convention System: the Commission was abolished, and the Committee of Ministers no longer took on the role as party for the applicant, though it retained an important role in ensuring the execution of judgments, the jurisdiction of the Court was made mandatory, and the Court started operating full time.

Protocol 11 had been necessary because the Council of Europe (CoE) was growing. The fall of the Iron Curtain had opened the door for applications form former communist countries, and the CoE had included them as Member States and signatories to the ECHR. This meant both that the sheer amount of people under the jurisdiction of the Court was growing, and furthermore, many of the new member states were still undergoing transitions to democracy with many of the rights in the Convention still unsettled. The numbers of applications were therefore rising, and a full-time Court was needed to deal with them. Protocol 11 was, however, delayed, and by the time it came into effect, the influx of cases had already increased beyond the additional capacity it provided.[20] While major changes, as those brought on by Protocol 11, can happen only through official political intervention from the Member States, smaller changes can be made by the internal bodies in the Council of Europe. As a response, the approach by the Court in the early 2000s was two-pronged. On the one

19 Cases where the applicant is a state rather than an individual. More on this period in Bates, *The evolution of the European Convention on Human Rights: from its inception to the creation of a permanent court of human rights* (2010), Chapter 6.

20 Myjer, *The conscience of Europe: 50 years of the European Court of Human Rights* (2010), 55.

hand, negotiations started for protocol 14[21], while on the other, the Court explored ways it could speed up filtering and adjudication without changes to the Convention.[22] This resulted for example in the pilot judgement procedure (Rule 61 of the Rules of Court), and the priority policy (Rules 39 and 41 of the Rules of Court). The two methods also worked in tandem in that protocol 14 both changed the Court directly by allowing single judge formations for cases on admissibility, and it moved certain decisions down a constitutional level to leave more to the Rules of the Court, which are adopted by the Plenary Court (Art. 25(d) ECHR). For example, the Court could after protocol 14 temporarily influence the number of judges that sit in a chamber in cooperation with the Committee of Ministers (Art. 26(2) ECHR) and allow registry employees to function as rapporteurs in single judge formations (Art. 24 ECHR). Protocol 14 was opened for signatures in 2004 but only came into effect in 2010, and like the situation in 1998, this delay meant that by the time it came into force, the backlog had grown so much that the rationalisations it offered were not going to be sufficient to deal with the problem.[23] This time however, the delay had been political. Russia had held back on ratifying protocol 14 to put pressure on the Court for what the Duma perceived as anti-Russian discrimination after losing a large number of high-profile cases on pre-trial detention.[24] While the protocol 14 situation was solved with the Madrid Agreement, which created protocol 14bis to enact the key provisions in protocol 14 on an optional basis, which removed Russia's power to withhold ratification, this political pressure within the reform process was a premonition of the forthcoming Interlaken process.

At the event of the 60th anniversary of the Convention, Jean-Paul Costa, the President of the Court at the time, asked the Member States to take

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21 Protocols 12 and 13 had dealt respectively with non-discrimination and the abolishment of the death-penalty rather than institutional reform.

22 The 2005 report by Lord Woolf explicitly had this purpose: Woolf, 'Review of the Working Methods of the European Court of Human Rights' (2005) *European Court of Human Rights*.

23 CoE, *Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights*, 27 September 2001, EG Court (2001)1, 6; CoE, *European Ministerial Conference on Human Rights and Commemorative Ceremony of the 50th anniversary of the European Convention on Human Rights*. Rome, 3–4 November 2000 (2002), 27 ff.

24 For example ECtHR, Judgment, 22 December 2008, *Aleksanyan v Russia*, Application No. 46468/06. See more on this in: Bowring, 'The Russian Federation, Protocol No. 14 (and 14bis), and the Battle for the Soul of the ECHR' (2010) *Goettingen Journal of International Law*, 2(2), 605.

on the task of reforming the Court yet another time. As with protocol 14, his memorandum suggested both direct changes to the Convention and suggested moving certain decisions down a constitutional level to let the Court decide in the future in case it yet again found itself in a situation where its current working methods were insufficient to deal with the incoming cases.[25] The Interlaken process was first and foremost about solving the problem of the backlog and the unsustainable workload,[26] but the suggestions in Costa's memorandum on how to deal with this engaged with a range of other themes that caught the eye of certain Member States. In addition to requesting a larger budget to deal with the larger caseload,[27] and suggesting a case-filtering mechanism to deal with the large number of inadmissible cases,[28] Costa made a wide-reaching suggestion to have the Member States take more ownership of the application of the Convention. He suggested making the Court's judgments binding not just on the parties to the case but for all Member States and allowing citizens to invoke the Convention directly before domestic courts, which would then in turn adjudicate on the basis of the Convention and the interpretations of the ECtHR. This would improve human rights protection, stop individuals from having to take their case all the way to Strasbourg, reduce the caseload on the ECtHR, and 'make it easier for the Court to maintain an appropriate distance from national proceedings in full compliance with the principle of subsidiarity.'[29] The idea of increasing the application of the principle of subsidiarity, by incorporating to a greater degree the national level in the responsibility to provide remedy for human rights interferences, was thus part of the reform programme in the Interlaken reform from the very beginning.

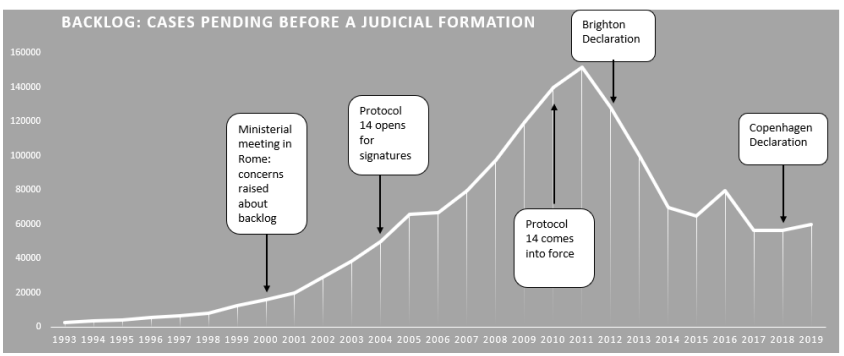
C. Progress in the Interlaken Process up until Copenhagen

When the Member States met in Interlaken, however, their initial conclusions were less dramatic than Costa's suggestions, although they did deal with the same themes. The Interlaken Declaration included an action plan with tasks for both the Member States and the Court, including streamlin-

25 Costa, *Memorandum of the President of the European Court of Human Rights to the States with a view to preparing the Interlaken Conference* (2009), para. 4.
26 *Ibid.* para. 1.
27 *Ibid.* para. 3.
28 *Ibid.* Ch 3(a).
29 *Ibid.* Ch B.2(1 and 2).

ing of the pilot judgment procedure that promised to lower the caseload by bundling cases together that deal with the same structural problem. The action plan also prescribed that the Committee of Ministers should determine before the end of 2019 whether the reforms were sufficient to make the Court's workload sustainable or if more profound changes were needed.[30] The Izmir Declaration largely followed up on the Interlaken Declaration with a few additions. There was an early mention of the option of an advisory mechanism (later Protocol 16), the issue of interim decisions was addressed, and there was a statement that the Court should not become a fourth instance court or immigration appeals tribunal – a theme that was to become much more potent later on.[31] By 2012, when the Brighton Declaration was adopted, the improved productivity of the Court made possible by Protocol 14 as well as the internal reforms and rule changes had already resulted in a decrease of the backlog. By the time the Copenhagen Declaration was adopted, the backlog was less than half the size it was in the worst year, 2011, although the number of cases pending before a judicial formation was still a worryingly high 56,350.

Figure 1.[32]



30 CoE, *High Level Conference on the Future of the European Court of Human Rights*, Interlaken Declaration, 19 February 2010, 6.

31 CoE, *High Level Conference on the Future of the European Court of Human Rights organised within the framework of the Turkish Chairmanship of the Committee of Ministers of the Council of Europe*. Izmir Declaration, Turkey 26 – 27 April 2011, para A(3).

32 This figure was created by gathering data on the backlog of cases from the yearly statistics reports of the Court from 1993–2019. For example: Rights, *Analysis of statistics 2018*, (2019).

In terms of themes, the Brighton Declaration built to some extent on the two previous Declarations, but it also contained new elements including an unprecedented critique of the judges and judgments of the Court and more detailed suggestions for how the Court should apply the principle of subsidiarity. The final Declaration's treatment of subsidiarity and the margin of appreciation is not so different from the formulations in the Court's own caselaw and was significantly toned down in comparison to the Brighton Draft.[33]

After Brighton, there was the Brussels Declaration that, in addition to repeating concerns from previous Declarations, focused on implementation at the national level. Both the Brighton and the Brussels Declarations thus had a subsidiarity focus, but where the Brighton Declaration, especially in the Brighton Draft, focused more on a 'room of manoeuvre' understanding, the Brussels Declaration and the 2015 CDDH report on the longer-term future of the Court had a stronger focus on the responsibility of States that subsidiarity entails.[34] Neither had taken up President Costa's suggestion to bring the Member States directly into the Convention adjudication system by making caselaw binding on all Member States and adjudicating more human rights cases at the national level.

By 2012, the Member States had mainly used Declarations to make suggestions and encouragements to the Court on changing its internal working mechanisms to increase the flow of cases as much as possible, but they had not enacted any actual changes to the Convention to enable this. The backlog of cases was diminishing mainly thanks to the changes made possible by protocol 14 coming into effect. The ability of a single judge processing clearly inadmissible cases was an important element, but so was the establishment of the filtering section in the Registry, as the Registry was now taking on by far most of the heavy work in processing inadmissible cases. The Brighton Declaration did change this situation somewhat, as it resulted in the adoption of protocols 15 and 16. Neither of these, however,

33 CoE, *High Level Conference on the Future of the European Court of Human Rights*, Brighton Declaration, 20 April 2012, para. 11; Glas, 'From Interlaken to Copenhagen: What Has Become of the Proposals Aiming to Reform the Functioning of the European Court of Human Rights?' (2020) 20(1) *Human Rights Law Review*, 121.

34 Kuijer, 'Margin of Appreciation Doctrine and the Strengthening of the Principle of Subsidiarity in the Recent Reform Negotiations' (2016) 36 *Human Rights Law Journal*, 339*;* CoE Steering Committee for Human Rights (CDDH), *The longer-term future of the system of the European Convention on Human Rights*, 11 December 2015, CDDH(2015)R84 Addendum I.

dealt directly with the problem the reform had set out to solve, namely the backlog, instead protocol 16 was to allow the Court to receive requests from high national courts for advisory opinions, while protocol 15 included a provision to shorten the deadline for making applications to the Court from six to four months and amend the preamble of the Convention to include reference to the subsidiarity-based interpretive principle of the Margin of Appreciation.[35] Both protocols could be construed to reduce the caseload indirectly. The explanatory report for protocol 15, however, mentions the acceleration of proceedings only in connection with relinquishing jurisdiction to the Grand Chamber.[36] The reduction of the time-limit for submitting applications and the removal of the exceptions for declaring cases inadmissible where the applicant has suffered 'no significant disadvantage' (Art. 35(b) ECHR) could both arguably reduce the number of incoming applications or make more cases rejectable at the administrative stage,[37] but this is not envisioned in the explanatory report. Similarly, the explanatory report to protocol 16 surprisingly does not mention the backlog or the workload of the Court at all. It argues, like the Izmir Declaration, that advisory opinions could help clarify provisions and case law, thus assisting States Parties in avoiding future violations.[38] On the other hand, the Copenhagen Declaration envisions that the coming into force of protocol 16 will add to the workload of the court.[39] Neither

35 *Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms.* (24.VI.2013); *Protocol No. 16 amending the Convention on the Protection of Human Rights and Fundamental Freedoms.* (2.X.2013).

36 CoE, *Explanatory Report to Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms*, 24 June 2013, Council of Europe Treaty Series No. 213.

37 Several commentators have assumed this for good or ill, e.g. Madsen, 'Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe?' (2017) 9(2) *Journal of International Dispute Settlement*, 199 (201); Amnesty International et al., *Joint NGO response to Protocol 15 to the European Convention on Human Rights must not result in a weakening of human rights protection*, 24 June 2013, https://www.justiceinitiative.org/uploads/f4e441ba-07dc-4061-b113-049ccf470ac5/echr-protocol15-joint-statement-06272013.pdf; Arnardóttir, 'Organised Retreat? The Move from 'Substantive' to 'Procedural' Review in the ECtHR's Case Law on the Margin of Appreciation' (2015) 5(4) *ESIL Conference Paper Series*, 1.

38 CoE, *Explanatory Report to Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 2 October 2013, Council of Europe Treaty Series No. 214.

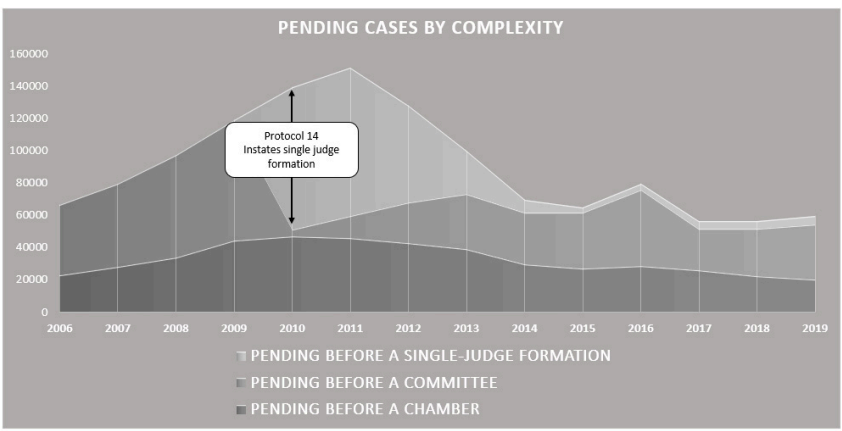
39 CoE, Copenhagen Declaration, 13 April 2018, https://rm.coe.int/copenhagen-declaration/16807b915c, para. 46.

protocols 15 nor 16 had yet come into force by the time Denmark took over the Chairmanship of the Committee of Ministers. Protocol 16 required at least 10 ratifications while protocol 15 required all Members to ratify before it could come into effect. Protocol 16 came into effect in August 2018 shortly after the Copenhagen High-Level Conference, while protocol 15 came into force in August 2021.

D. The Copenhagen Declaration

When Denmark took over the Chairmanship there had thus been four Declarations and two amending protocols had been negotiated and were open for signature, but the overarching problem of the backlog and the unsustainably high caseload had not been solved. Furthermore, the remaining backlog consisted of more complex cases, many of them potentially well-founded and pending before a Chamber or the Grand Chamber.

Figure 2.[40]



Furthermore, the 2019 deadline set in the Interlaken Declaration was approaching and the Committee of Ministers had to determine whether the existing rationalisations were sufficient or if more profound reforms were

40 Figure created using data on the yearly backlog from ECtHR statistics 2009 through 2019, including *Statistics on pending cases and executions, Overview 1998–2017* (2017).

needed to ensure the future of the Court. In terms of addressing the issues that had initiated the Interlaken process, there was thus plenty of work still to do and little time to do it.

Instead of restructuring the Court or increasing its budget, the Member States had spent a lot of energy in the negotiations of the Declarations to debate the meaning of the principle of subsidiarity and how it should be applied in the Convention system. Two distinct but connected conceptualisations had been reached in the Brighton and Brussels Declarations. Brighton's definition conceptualised subsidiarity mainly through the better-placed argument, and the Brighton Draft had even conceptualised it as a right for States, pointing to the notion of democratic mandate.[41] Meanwhile, the Brussels Declaration had focused on national implementation and conceptualised subsidiarity mainly as a duty for States to ensure the rights within their jurisdictions and to provide a remedy and adjudication if such securing of rights failed.[42] The Danish Chairmanship appeared to be more convinced by the Brighton understanding of subsidiarity as the Brighton Declaration is referenced four times as often as the Brussels Declaration in the parliamentary debates and press clippings provided as background material for the Danish parliament by the inter-ministry taskforce for the Chairmanship.[43]

The Copenhagen Draft which the Danish Chairmanship presented in February 2018 was, generally speaking, a continuation of the previous reform programme. It included many of the elements present in the Declarations before it. In addition to reaffirmations of the States Parties' commitment to the Convention, the right to individual application, and the reform process (paras. 1 ff.),[44] the Copenhagen Draft dealt with the concept

41 Committee of Ministers. 2012. Brighton Declaration. Brighton. Para B(11). And British Chairmanship of the Council of Europe 2012. February 23rd 2012. Draft Brighton Declaration. United Kingdom, para. 17.

42 Kuijer see note 30: 339; Donald and Leach, 'A Wolf in Sheep's Clothing: Why the Draft Copenhagen Declaration Must be Rewritten', EJIL:Talk!, 21 February 2018, https://www.ejiltalk.org/a-wolf-in-sheeps-clothing-why-the-draft-copenhagen-declaration-must-be-rewritten/.

43 Taskforce Ministry of Justice and Ministry of Foreign Affairs, *Presseklip (Background information to the Parliamentary group on Council of Europe)* (25 October 2017).

44 See also CoE, Interlaken Declaration, 19 February 2010, 1; Izmir Declaration, 1; CoE, Brighton Declaration, 20 April 2012, paras. 1 ff.; CDDH, Brussels Declaration adopted at the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" (Brussels, Belgium, 26–27 March 2015), 10 April 2015, CDDH(2015)004, 2 f.

of subsidiarity and shared responsibility (paras. 5 ff. and 22 ff.);[45] national implementation and execution of judgments (paras. 16 ff.), including the pilot judgment procedure (paras. 43, 50, 70 ff.) and the establishment and role of National Human Rights Institutions(NHRIs) (paras. 18, 21);[46] dialogue between domestic authorities and the Court (paras. 31 ff.),[47] the caseload, including the budget (paras. 43 ff.);[48] clarity and consistency of the Court's interpretation (paras. 55 ff.);[49] the selection and election of judges of the highest quality (paras. 62 ff.);[50] and finally, the accession of the EU to the Convention (para. 79).[51]

The Copenhagen Draft, however, also contained highly contentious statements on treaty interpretation, subsidiarity, and dialogue, which went on to be commented critically in the Joint NGO Response and in responses from the PACE and the Court itself. Both the PACE and the Court itself issued responses to the Copenhagen Draft, but neither gave suggestions on specific changes to the wording. The Court was more soft-spoken than the PACE, as was also pointed out by defenders of the Draft.[52] The Court still, however, in its diplomatic way, pointed out several problems with the Draft. Initially, in its introductory remarks, the Court reiterated the

45 See also CoE, Interlaken Declaration, 19 February 2010, 1 f.; Izmir Declaration, 1 f.; CoE, Brighton Declaration, 20 April 2012, paras. 3, 10 ff., 33; CDDH, Brussels Declaration, 10 April 2015, CDDH(2015)004, 2 ff.

46 See also CoE, Interlaken Declaration, 19 February 2010, 2 f., 5 f.; Izmir Declaration, 1, 3 f., 6; Brighton Declaration, 20 April 2012, paras. 7 ff., 26 ff.; CDDH, Brussels Declaration, 10 April 2015, CDDH(2015)004, 4, 6 ff.

47 See also Izmir Declaration, 5; CoE, Brighton Declaration, 20 April 2012, paras. 12(c) ff., 20(g) ff.; DDH, Brussels Declaration, 10 April 2015, CDDH(2015)004, 4 f., 7 f.

48 See also CoE, Interlaken Declaration, 19 February 2010,, 1 ff.; Izmir Declaration, 1 ff.; CoE, Brighton Declaration, 20 April 2012, paras. 5, 13 ff., 16 ff.; CDDH, Brussels Declaration, 10 April 2015, CDDH(2015)004, 2 f., 5.

49 See also CoE, Interlaken Declaration, 19 February 2010, 2; Izmir Declaration, 2; CoE, Brighton Declaration, 20 April 2012, paras. 25(c) ff.; CDDH, Brussels Declaration, 10 April 2015, CDDH(2015)004, 2 f., 5.

50 See also CoE, Interlaken Declaration, 19 February 2010, 2, 5; Izmir Declaration, 2; CoE, Brighton Declaration, 20 April 2012, paras. 21 f., 25; CDDH, Brussels Declaration, 10 April 2015, CDDH(2015)004, 2 f., 4.

51 See also CoE, Interlaken Declaration, 19 February 2010, 1; Izmir Declaration, 1, 6; CoE, Brighton Declaration, 20 April 2012, para. 36; CDDH, Brussels Declaration, 10 April 2015, CDDH(2015)004, 4.

52 Madsen and Christoffersen, 'The European Court of Human Rights' View of the Draft Copenhagen Declaration', EJIL:Talk!, 23 February 2018, https://www.ejiltalk.org/the-european-court-of-human-rights-view-of-the-draft-copenhagen-declaration/.

division of power and responsibilities in the Convention system and the importance of judicial independence.[53] This speaks to the general tenor and tendency in the Copenhagen Draft to understand subsidiarity as a right for states and diminish the importance of judicial independence.

In relation to the topic of subsidiarity, the Court was concerned by the Copenhagen Draft's mention of 'national circumstances' and 'constitutional traditions' as something that should influence interpretation.[54] The PACE clarified this in stronger language, arguing that '[t]hrough repeatedly highlighting one aspect of subsidiarity, the Draft Declaration gives the impression that the Court's role should be essentially deferential, or even subordinate to that of national authorities'.[55] Another way the Court subtly suggested a change of discourse on subsidiarity was in reference to paras. 22 ff., where the Copenhagen Draft made a series of statements on what the margin of appreciation is and how it ought to be applied. Here, the Court simply stated that it assumed that these statements attempted to derive a general position from the case law, and if that were the case, the Copenhagen Draft should have included as well the provisions involved, the exact nature of the facts, complaints and the procedural background. Furthermore, the Court retained the power to give the final ruling.[56] Discursively, this is less direct than the joint response from human rights non-governmental organisations, which stated that *'it is not for a political Declaration to seek to determine what and how judicial tools of interpretation, such as the margin of appreciation, [are applied]'*.[57] Substantively, however, the point is the same.

Both the Court and the PACE, as well as the NGOs and academics, rejected the Copenhagen Draft's attempts at gaining the right to define the margin of appreciation, and attempts at expanding the concept of subsidiarity at the Court's expense. In terms of changes, the final Copenhagen

53 ECtHR, Opinion on the draft Copenhagen Declaration. Adopted by the Bureau in light of the discussion in the Plenary Court on 19 February 2018, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, para. 4.

54 ECtHR, Opinion on the draft Copenhagen Declaration, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, paras. 9 f.

55 PACE, *Declaration on the Draft Copenhagen Declaration on the European Human Rights system in the future Europe*, 16 March 2018, AS/Per (2018) 03, para. 5.

56 ECtHR, Opinion on the draft Copenhagen Declaration, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, para. 13.

57 Amnesty International et al., *Joint NGO Response to the Draft Copenhagen Declaration*, 13 February 2018, https://www.amnesty.eu/news/joint-ngo-response-to-the-draft-copenhagen-declaration/, 6.

Declaration retained several paragraphs on subsidiarity and the margin of appreciation, with central parts removed and key elements added. Discursively, the final Copenhagen Declaration refers to the Court's caselaw in its argumentation on the margin of appreciation rather than issuing declarative statements itself, and uses terms like 'recalling', 'reiterating', and 'welcoming' about the Court's interpretative practice, rather than 'encouraging' or 'inviting'.[58] In terms of substantive changes, a reference to the two characteristics of subsidiarity prevalent in the Brighton and Brussels Declarations was added to para. 7, and the clause 'Reiterates that strengthening the principle of subsidiarity is not intended to limit or weaken human rights protection' was added to para. 10. Furthermore, any reference singling out the field of asylum and immigration as an area where the Court should 'avoid intervening except in the most exceptional circumstances'[59] was removed. This is strong evidence that the tenor of the Declaration had softened, especially considering that the final Izmir Declaration did contain a reference to the Court not being an immigration appeals tribunal, though with a softer wording more in line with the case law than the Copenhagen Draft originally sported.[60] The contentious subsection on the need for clarity and consistency in the interpretation of the Convention was also reduced and written into the subsection on subsidiarity. The Court itself pointed out that there is no formal doctrine of precedent, while the PACE opinion more directly warned that the Copenhagen Draft's reference to national considerations could harm the universality of human rights, and the joint NGO responses directly suggested deleting the paragraphs instructing the Court how to interpret.[61]

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58 Committee of Ministers. 2018. Copenhagen Declaration. Denmark, paras. 9–10, 29–32, 37, 47–48, 58; Danish Ministry of Justice, 5 February 2018, Draft Copenhagen Declaration Denmark, paras. 11–15, 28, 30, 38–39, 48–49, 60–61.

59 Draft Copenhagen Declaration, 5 February 2018, https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/nyheder/draft_copenhagen_declaration_05.02.18.pdf, paras. 25 f.

60 Izmir Declaration, 3.

61 Draft Copenhagen Declaration, 5 February 2018, https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/nyheder/draft_copenhagen_declaration_05.02.18.pdf, paras. 55 ff.; ECtHR, Opinion on the draft Copenhagen Declaration, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, paras. 27 f.; PACE, Declaration on the Draft Copenhagen Declaration, 16 March 2018, AS/Per (2018) 03, paras. 3 f.; Amnesty International et al., *Joint NGO Response to the Draft Copenhagen Declaration*, 13 February 2018, https://www.amnesty.eu/news/joint-ngo-response-to-the-draft-copenhagen-declaration/, 10 f.

On the topic of dialogue between Member States and the Court, the Copenhagen Draft suggested that the case law of the Court has significant impact on domestic policy questions, wherefore the Court should engage in 'increased dialogue on the general development of case law in important areas' (paras. 32 f.) in a series of informal meetings (para. 42). These paragraphs were widely criticised.[62] The Court itself pointed out that while it is already engaged in judicial dialogue through its Superior Courts Network,[63] the appropriate forum for dialogue with governments on case law was through third-party interventions.[64] On the topic of an ongoing political dialogue among Member States, the Court pointed out that it would neither comment nor become involved in it because of its judicial independence.[65] In the final Declaration, these concerns were taken into account, and the only substantive suggestions that remained were for the Court to adapt its procedures to make it possible for other Member States to indicate their support for the referral of a Chamber case to the Grand Chamber.[66] In terms of the informal meetings for discussing case law developments, they were reduced to a single meeting following up on the Danish Chairmanship where jurisprudence could be discussed with full respect for the Court's independence and the binding nature of the judgments.[67]

Apart from the Copenhagen Draft's suggestion to create a separate mechanism for inter-state cases or cases concerning international conflict,[68] the Court did not have any particularly critical remarks concerning the Drafts' suggestions for dealing with the caseload. It did point out, however, that it had already had success with implementing a system for

62 Føllesdal and Ulfstein, 'The Draft Copenhagen Declaration: Whose Responsibility and Dialogue?', EJIL:Talk!, 22 February 2018, https://www.ejiltalk.org/the-draft-copenhagen-declaration-whose-responsibility-and-dialogue/; Amnesty International *et al.*, Joint NGO Response to the Draft Copenhagen Declaration, 13 February 2018, https://www.amnesty.eu/news/joint-ngo-response-to-the-draft-copenhagen-declaration/.

63 ECtHR, Opinion on the draft Copenhagen Declaration, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, para. 15.

64 *Id*., para. 16.

65 *Id*., para. 18.

66 CoE, Copenhagen Declaration, 13 April 2018, para. 38.

67 CoE, Copenhagen Declaration, 13 April 2018, https://rm.coe.int/copenhagen-declaration/16807b915c, , para. 41.

68 ECtHR, Opinion on the draft Copenhagen Declaration, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, para. 26, where it remarks that clarification of the idea is required before it can be properly analysed.

giving reasons for single judge decisions despite its workload, suggesting that the Copenhagen Draft made a mistake in assuming the Court to be at its maximum capacity.[69] Generally, the Joint NGO Response's concerns that the Copenhagen Draft advocated friendly settlements, unilateral declarations and dealing with the repetitive cases to 'avoid the need for the Court's adjudication', were addressed and the language in these paragraphs was changed. Para. 44 had previously argued that the Court had the capacity to deliver no more than two thousand cases per year,[70] referencing an analysis of an unknown source presented at the Expert Conference in Kokkedal,[71] – but was significantly toned down and made less concrete.[72] On the point of the budget, which in many ways is the only reliable evidence on whether there is political will to solve the problems of the caseload, the Court asked in its opinion on the Copenhagen Draft that it deliver a stronger message on allocating resources to deal with the backlog.[73] However, in this regard, there was no improvement in the final Declaration, which still only 'acknowledges the importance of retaining a sufficient budget' (para. 52).

E. Conclusion

The final Copenhagen Declaration in quantitative terms incorporated more than three out of every four substantive suggestions for changes from the Joint NGO Response, and qualitatively, the final Declaration strikes a much different tone than the Draft.[74] The PACE's follow-up report also

69 ECtHR, Opinion on the draft Copenhagen Declaration, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, para. 19.

70 Draft Copenhagen Declaration, 5 February 2018, https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/nyheder/draft_copenhagen_declaration_05.02.18.pdf, para. 44. For this issue, see also Amnesty International *et al.*, Joint NGO Response to the Draft Copenhagen Declaration, 13 February 2018, https://www.amnesty.eu/news/joint-ngo-response-to-the-draft-copenhagen-declaration/, p. 9.

71 The Kokkedal Conference took place under Chatham House Rules.

72 CoE, Copenhagen Declaration, 13 April 2018, https://rm.coe.int/copenhagen-declaration/16807b915c, para. 44.

73 ECtHR, Opinion on the draft Copenhagen Declaration, 2018, https://www.echr.coe.int/documents/opinion_draft_declaration_copenhague%20eng.pdf, para. 23.

74 Molbæk-Steensig, 'Something Rotten in the State of Denmark?', Verfassungsblog, 26 April 2018, https://verfassungsblog.de/something-rotten-in-the-state-of-denma

argued that its concerns were largely addressed,[75] though it also expressed unease about the fact that a founding member had released a Draft challenging the universality of human rights and the independence of the Court.[76] Furthermore, the PACE addressed that the Declaration had failed to propose concrete solutions to the main challenge of the caseload or the non-implementation of judgments,[77] and that it still contained problematic notions on dialogue, even if 'boilerplate statements' on the Court's independence had been added.[78] At the PACE level, the narrative thus appears to be that while the Copenhagen Draft disaster was averted, the final Declaration had little concrete impact, and the Court was still lacking the support it needed from the Member States to solve the problem of receiving more cases than it could process with existing resources.

On the question of why the Danish Chairmanship would issue such a Draft – and openly – one has to look no further than the domestic political debate in the previous two decades. The far-right has been critical of all things European since the beginning of the 1990s, but in the 2000s there was a shift in the Danish debate in which the practice of criticising the Court became common place across the political spectrum.[79] While the change cannot be traced back to any one case, *Sørensen and Rasmussen v Denmark* from 2006 is often referenced by the Court's critics.[80] This case concerned the right to association and reached the conclusion that Article 11 necessarily included a right not to be a part of an association as well, which made the Danish system of exclusive agreements for labour unions a human rights violation. Danish politicians complained that this

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rk/; Ulfstein and Føllesdal, 'Copenhagen – Much ado about little?', EJIL:Talk!, 14 April 2018, https://www.ejiltalk.org/copenhagen-much-ado-about-little/.

75 PACE, *Copenhagen Declaration, appreciation and follow-up*, 24 April 2018, Doc. 14539, para. 4.

76 *Id*., para. 5.

77 *Id*., para. 15.

78 *Id*., para. 16.

79 As an example, the Taskforce's Presseklip show the debate in public newspapers whereas the Parliamentary debate: F 47 Om domstolsaktivismen ved Den Europæiske Menneskerettighedsdomstol. Denmark on. 18–06–2020 available here: https://www.ft.dk/samling/20191/forespoergsel/f47/index.htm is a good example of the political discourse.

80 Henriksen (2017), 'Demokratiet Undermineres'. *Nordjyske Stiftidende*. https://nordjyske.dk/plus/domstol-gaar-over-graensen/3f0cd5a0-05c0-4d39-9137-99bbeeb05512 and Bramsen, 'Den er gal med fortolkningen af menneskerettighederne', Netavisen Pio, 21 August 2017, https://piopio.dk/den-er-gal-med-fortolkningen-af-menneskerettighederne.; ECtHR, Judgment (GC), 11 January 2006, *Sørensen and Rasmussen v Denmark,* Application Nos. 52562/99 and 52620/99.

was directly contrary to what had been agreed during the preparations of the Convention. Furthermore, the case was unpopular among the unions and therefore also with the centre-left which had otherwise been the Court's champion. By the 2010s, immigration had become a particularly troublesome topic in Danish politics, and the Court was often criticised by the far-right as an institution keeping Denmark from expelling criminal foreigners. In the meantime, the far-right party, the Danish Peoples Party, had moved from the fringes to the centre of national politics as has occurred in many European countries. By 2017, when Denmark took over the Chairmanship, the Danish Peoples Party were part of the parliamentary majority supporting the ruling centre-right coalition. During the preparations for the Chairmanship, there were opinion pieces from across the political spectrum on how the Court had become activist and disrespectful of democratic values. The far-right suggested leaving the Convention altogether or writing it out of Danish law, a debate not unlike the Human Rights Act debate in the United Kingdom.[81] While the governing centre-right coalition had it as part of its official political framework to 'have a critical look at how the ECtHR has expanded the reach of the ECHR through its dynamic interpretation'.[82] On the centre-left, the Social Democrats also had their think pieces attacking the Court's interpretation as lacking democratic legitimacy.[83] These political statements utilised arguments from many respected academics who had published in newspapers, popularised science formats or in Danish-language academic journals. These pieces on the democratic legitimacy, judicial interpretation traditions or the reform of the Court ranged from intense normative arguments that the very concept of constitutional rights was undemocratic, and international human rights law particularly so,[84] and hard criticism

81 Folketinget, *Forslag til folketingsbeslutning om den europæiske menneskerettighedskonvention*, 25 October 2016, Folketinget 2016–17, Beslutningsforslag nr. B 18; Conservatives, Protecting Human Rights in the UK. The Conservatives' Proposals for Changing Human Rights Laws, 2014, https://www.amnesty.org.uk/files/protectinghumanrightsinuk_conservativeparty.pdf?vhzrAQkxzwCH8hbjeYhhcu5B5lyPp_9K=.

82 Regeringen, *Regeringsgrundlag Marienborgaftalen 2016: For et Friere, Rigere og Mere Trygt Danmark* (2016), 55.

83 Bramsen, Den er gal med fortolkningen af menneskerettighederne, Netavisen Pio, 21 August 2017, https://piopio.dk/den-er-gal-med-fortolkningen-af-menneskerettighederne. Parties left of the social democrats have been critical of the government's discourse in parliament, but they have not been very active on this subject in the public debate.

84 Nielsen, *Loven* (2014) 58–60.

of the interpretation of the Convention including a suggestion to leave the Convention altogether,[85] to more moderate but still critical accounts of the power and interpretation of the Court[86] or its lack of a democratic mandate.[87] We can be fairly certain that these academic arguments influenced legislatures and ministers or at least legitimised opinions they already held because politicians not only reused them verbatim but also referred to them explicitly.[88]

Two years after the Copenhagen Declaration, the Committee of Ministers formally closed the Interlaken process on the 130th meeting on 4 November 2020.[89] The decision reiterated the goals and decisions in the Declarations, concluding on the themes of subsidiarity,[90] dialogue between the national and the European level,[91] national implementation and execution,[92] selection of judges[93] and the budget.[94] In the text, the States are asked to give full effect to the principle of subsidiarity by complying with their obligation to ensure the rights of everyone within their jurisdiction.[95] There is no mention of subsidiarity as an element of democratic legitimacy. The understanding of dialogue was also limited to being within the Superior Courts Network, with no suggestion to have political declarations on the direction of the Court's case law.[96] In other words, the decision formally closing the Interlaken process includes none

85 Andersen, 'Menneskerettighedsdomstolens dynamiske fortolkninger som retspolitisk problem' (2017) 3(1) *Juristen*, 81 ff.

86 Christoffersen, *Menneskeret: En demokratisk udfordring* (2014), 117.

87 Smith, 'Menneskerettighedsdomstolen er på vildspor', *Politiken*, 1 October 2017, https://politiken.dk/debat/kroniken/art6139412/Menneskerettighedsdomstolen-er-p%C3%A5-vildspor.

88 The Minister of Justice thus referred to Christoffersen's book in *Justitsministerens svar på spørgsmål 181 Almen del* (2016). Smith's piece, Henriksen's piece, an opinion piece by Bryde Andersen and the article on Støjberg were all part of the *Presseklip (Background information to the Parliamentary group on Council of Europe)* (2017, 25 October). Available here https://www.ft.dk/samling/20171/almdel/ERD/bilag/1/1808235.pdf

89 CoE Committee of Ministers, *130th Session of the Committee of Ministers* (Videoconference, Athens, 4 November 2020). 4. Securing the long-term effectiveness of the system of the European Convention on Human Rights, CM/Del/Dec(2020)130/4, para. 1.

90 *Id.*, para. 2.

91 *Id.*, para. 10 f.

92 *Id.*, para. 8 f., 12.

93 *Id.*, para. 6.

94 *Id.*, para. 7, 13 f.

95 *Id.*, para. 2.

96 *Id.*, Preamble.

of the contentious elements from the Copenhagen Declaration or its Draft. There may be any number of reasons why the Danish representative in the Committee of Ministers did not protest these conclusions publicly. First and foremost, most states had other, pandemic-related things on their plate at the end of 2020 and might well have thought of the meeting in the Committee of Ministers as a formality. The decision was also made with little public fanfare. Furthermore, the Danish government had changed in the meantime. While more recent debates in the Danish parliament suggest that the current government is just as critical of the Court as the previous one, these debates also show that the Copenhagen Declaration was very much considered a project of the former government.[97]

The Committee of Ministers' 130th meeting's decision was informed mainly by the final report of the CDDH adopted a year earlier[98] and the Court's comments on this. Great emphasis was placed on both the CDDH's contribution and the PACE's reports and on the success of the Court in bringing down the backlog of cases significantly. However, the Court noted that the remaining backlog consists of more complex and potentially well-founded cases and that without the influx of additional resources in the form of either budget or seconded national lawyers and judges, the Court will not be able to tackle this remaining backlog. At the end of the day, during the Interlaken process, the Member States first dragged their feet and then got caught up in internal party politics, and eventually did not deliver what the Court needed to deal with the backlog and unsustainably high caseload.

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97 *Parliamentary debate: F 47 Om domstolsaktivismen ved Den Europæiske Menneskerettighedsdomstol.*, (18 June 2020), Denmark.

98 CDDH, *Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration*, 29 November 2019, CDDH(2019)R92Addendum2.

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